

**Communication to the Office of the Prosecutor of the
International Criminal Court:**

**Violence Against Trade Unionists in
Colombia as a Crime against Humanity**

EXECUTIVE SUMMARY

submitted on 9 October 2012

by

European Center for Constitutional and Human Rights

together with



and



I. Introduction

On 9 October 2012, we filed a communication to the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) under Article 15 of the ICC Statute of the International Criminal Court (in the following: ICC Statute) and requested further investigative steps within the OTP's previously opened preliminary examination on the situation in the Republic of Colombia. We urge the Prosecutor to submit a request for authorisation of an investigation to the Pre-Trial Chamber according to Article 15(3) of the ICC Statute, in order to initiate a full investigation with all duties and powers provided by Article 54 of the ICC Statute.

In this communication, we focus on crimes against humanity committed against trade unionists in Colombia. We chose this issue for several reasons:

- 1.) Anti-union violence in Colombia – exemplary for all crimes committed against human rights defenders – is an emblematic case of violence used strategically by the state and paramilitary groups as part of counter-insurgency strategies.
- 2.) Crimes against trade unionists in Colombia have reached an extent unlike anywhere else in the world and they are still being committed today: this year alone, 13 trade unionists have been killed up to August 2012.
- 3.) More than 90% of the crimes remain in absolute impunity.

II. Background and Facts: Anti-union violence in Colombia

1. Context of anti-union violence in Colombia

Numerous studies have been carried out by international organizations, governmental agencies and non-state actors (trade unions and human rights organizations) in order to analyse violence committed against trade unionists in Colombia in the last three decades. The purpose of this section is to present the extent of anti-union violence in Colombia relying on the most important studies carried out on the issue and to verify whether the cases selected for this communication and presented above, fall within a more consistent context of violence against trade unionists.

According to these studies it is possible to describe violence against trade unionists occurring in Colombia during the last three decades to June 2012, to analyse how this violence was distributed in the country, and identify which trade unions were most affected by the violence.

The statistics show an extremely high number of killings and further offences committed against trade unionists. According to statistics of the *Escuela Nacional Sindical*, between 1986 and June 2012, 2,927 trade unionists were killed in Colombia.¹ 12,448 further acts of serious violence were carried out during the same period.² Between 1985 and 2010, at least 30 trade unionists were killed every year.³ These numbers are confirmed by data of the *Centro de Investigación y Educación Popular* (CINEP) and are slightly higher than those released by the

¹ *Escuela Nacional Sindical (ENS)*, Statistics, Table 1, "Violaciones al derecho a la vida, a la libertad y a la integridad física de sindicalistas en Colombia, 1986-2012 (Junio 30)".

² *Ibid.* The number encompasses the following acts of violence: threats (5,790), forced deportation (1,815), arbitrary detention (663), harassment (412), attack (with or without physical injuries) (295), enforced disappearance (229), kidnapping (170), torture (92), illegal raid (52) and killing of a relative (3).

³ *Comisión Colombiana de Juristas (CCJ)/ Escuela Nacional Sindical (ENS)*, "Imperceptiblemente nos encerraron. Exclusión del sindicalismo y lógicas de la violencia antisindical en Colombia 1979-2010", 2012, Table 2, p. 37, available at <http://www.ens.org.co/index.shtml?s=e&m=a> (last accessed on 5 October 2012).

*Programa Presidencial para la Protección y Vigilancia de los Derechos Humanos y el Derecho Internacional Humanitario (PPDH).*⁴

Between 2002 and 2012, the time period falling within the jurisdiction of the ICC, 775 trade unionists were killed, 61 were forcibly disappeared and 3,785 were threatened (as shown in the following table).

Violations of the right to life, liberty, physical integrity of trade unionists in Colombia, 2002-2012 (30 June 2012)		
Type of violation	N° Cases	%
Trespass or breaking and entering	32	0.50%
Threats	3,785	59.66%
Assassination attempts with or without injury	133	2.10%
Disappearances	61	0.96%
Forced displacement	656	10.34%
Arbitrary detention	455	7.17%
Murder	775	12.22%
Harassment	361	5.69%
Kidnapping	57	0.90%
Torture	29	0.46%
Total	6,344	100.00%

Source: *Escuela Nacional Sindical*

2. Selection criteria for the presented cases

Of the almost 3,000 assassinations of trade unionists committed in the past three decades, we present in our communication five exemplary cases based on the following criteria:

With regard to the time frame, Colombia accepted the jurisdiction of the ICC over crimes against humanity from 1 November 2002. Therefore, only cases occurring after this date are included in our communication. 775 murders of trade unionists fall under this time period. Due to complementarity considerations, in order to award Colombia's national judicial system adequate time to deal with the cases on its own, no cases after 2009 were considered. While ratifying the Rome Statute of the ICC, Colombia, however, suspended the ICC's jurisdiction over war crimes for seven years (under Article 124). War crimes hence only fall under the jurisdiction of the Court when committed after 1 November 2009. They are therefore not included in this communication. Therewith, we do, however, not exclude the possibility that war crimes occurred in Colombia.

Perpetrators, in the majority of cases (77%), enjoy absolute impunity with neither the wider group of perpetrators nor any principal authors of the crime being identified. Yet, of the remaining cases in which the (alleged) perpetrators could be identified, it is clear that the actors principally responsible for crimes committed against trade unionists are the paramilitaries (13% of the cases solved) and state security forces (3% of the cases solved), as well as the guerillas (5% of the cases solved). As the investigation rate of guerilla groups is

⁴ Both published in *United Nations Development Programme (UNDP)*, "Reconocer el pasado, construir el futuro", Graphic 2.3, p. 55 and Table 2.1, p. 56, available at <http://www.pnud.org.co/sitio.shtml?apc=i1-----&x=66637> (last accessed on 5 October 2012). The mentioned table further provides a comparative view of the different data for every year. However, only the statistics published by ENS cover the whole period (1986-2012).

comparatively high and higher ranking guerilla commanders are being investigated, the focus of this communication is on the other two groups. Moreover, paramilitaries and state security forces have frequently collaborated in order to implement common policies and reach joint goals. Hence, two cases have been chosen in which the crimes were committed by paramilitaries (Luciano ROMERO and Maria LUCERO HENAO), while in the remaining three cases the acts were attributed to the military (Arauca and Alejandro URIBE) or police forces (Guillermo RIVERA). The involvement of an increasing number of political and governmental actors with paramilitary crimes came to light through the “parapolitica” and DAS-scandals. These are reflected in two cases, one where members of the Colombian Secret Service Departamento Administrativo de Seguridad (DAS) are implicated (Luciano ROMERO), and the other where the name of the future victim was passed on to the paramilitaries by a local politician (Maria LUCERO HENAO). Finally, the sometimes close collaboration between military and paramilitary groups in the course of Colombia’s armed conflict is being increasingly ascertained, and is also evidenced in one of the cases (Maria LUCERO HENAO).

3. Facts of the selected cases

(1) The first case concerns Maria LUCERO HENAO who was a trade unionist and a social activist in the region of Alto Ariari in the department of Meta. On 6 February 2004, paramilitaries of the “Bloque Centauros”, which forms part of the paramilitary group „Autodefensas Unidas de Colombia“ (AUC), took Maria LUCERO HENAO and her 16 year old son Yamid Daniel HENAO out of their house and executed them.

(2) The three Colombian unionists – Jorge Eduardo PRIETO CHAMUCERO, Héctor Alirio MARTÍNEZ and Leonel GOYENECHÉ GOYENECHÉ – were killed by members of the Colombian army on 5 August 2004, in the department of Arauca. They had not been carrying weapons, nor had they tried to resist the militaries in any way. Nevertheless, the three unionists were shot to death, and proclaimed by the army as guerrillas killed in combat. Prior to their assassination and as a result of their union, political and social activism in the department of Arauca, the three trade unionists had been the object of constant harassment. The risks associated with trade unionism and social activism in Arauca had previously been recognized by a 2002 resolution of the Inter-American Commission of Human Rights, in which Colombia was urged to take provisional measures to protect the life and the integrity of 14 unionists in Arauca, among them ALIRIO MARTÍNEZ and PRIETO CHAMUCERO. Instead of protecting the trade unionists, state officials – in particular high-ranking members of the army – before and after the assassinations falsely accused the three of being associated with the guerrillas – a pattern occurring repeatedly in crimes against trade unionists.

(3) Luciano Enrique ROMERO MOLINA was for many years an employee in the Cicolac factory of the Swiss company Nestlé in Valledupar and active in the local management of the trade union SINALTRAINAL (Sindicato Nacional de Trabajadores del Sistema Agroalimentario). On the evening of 10 September 2005, he was kidnapped by paramilitaries of the Bloque Norte of the AUC, mistreated, and stabbed 50 times. His assassination had been preceded by surveillance and repression by state authorities, in particular the Colombian secret service DAS as well as defamations and false accusations by Nestlé-Cicolac staff members, and – subsequently – death threats by the paramilitary.

(4) Alejandro URIBE CHACÓN was a 29-year old miner living in the district of Mina Gallo, municipality of Morales, department of Bolívar. He was a trade unionist and a social activist in San Lucas, a mountain region located between the northeast of Antioquia and southern Bolívar, an area traditionally extensively mined for gold. Alejandro URIBE was involved in the defense of the rights of miners to have access to the mines and against the attempts of

massive gold exploitation of several multinational companies. Alejandro URIBE was killed on 19 September 2006 by officials of the anti-aircraft battalion Nueva Granada.

(5) Guillermo RIVERA FÚQUENES was a trade unionist and a political and social activist in the city of Bogotá who disappeared on 22 April 2008, in a street in the neighborhood of “El Tunal”. At the time of the incident, several police cars were present in the street, and the police are alleged to be responsible for his disappearance. His dead body was found two days later 179 kilometers away in the city of Ibagué (department of Tolima) and buried anonymously. The identification occurred almost three months later on 15 July 2008, when prosecutors ordered the exhumation of the corpse and identified it as the body of Guillermo RIVERA.

III. Conclusion

There is a reasonable basis to believe that since 1 November 2002 crimes against humanity have been committed against trade unionists as part of the broader attack against human rights defenders in Colombia. Emblematic examples are the cases presented in this communication: the murder of the trade unionists of Arauca as well as of Maria LUCERO HENAO, Luciano ROMERO, Alejandro URIBE, and Guillermo RIVERA. These cases fulfil all the elements required by Article 7(1) of the ICC Statute, particularly as the crimes committed can be described as part of a widespread and systematic attack directed against a civilian population. The element of a State policy to commit such an attack can be inferred from national policies and counter-insurgent doctrines targeting trade unionists as “guerrilleros” and hence enemies of the State. This stigmatization and public discrediting of trade unionism is combined with the cooperation of State actors with illegal armed groups in a series of cases. The number of crimes committed against trade unionists in the past decades, including 3,000 murders (775 of these being from 2002 alone), amounts to such a level that it constitutes a widespread attack. The attack may, moreover, be described as systematic in character since it can be firmly excluded that anti-union violence in Colombia occurred randomly. Those qualifying as most responsible under the criteria of the ICC Statute – paramilitary commanders, high government officials as well as military and police commanders in charge in the past decade –, should be investigated for their individual criminal responsibility for these crimes.

Regarding the admissibility criteria under Article 17 of the ICC Statute, we conclude that the investigative steps undertaken by the Republic of Colombia since 2002, are insufficient. Impunity for those most responsible is absolute in the cases under consideration, so that the complementarity criteria are met. Since the cases presented in this communication meet the gravity threshold and an investigation would serve the interests of justice, we suggest that there is a reasonable basis to proceed with the investigation. Therefore, we urge the Prosecutor to submit a request for authorisation of an investigation to the Pre-Trial Chamber according to Article 15 (3) of the ICC Statute.

As the ICC shows continued reluctance to start formal investigations into the situation of Colombia, crimes under its jurisdiction are still being committed there on a daily basis. In particular, trade unionists are continuously targeted. Further, the situation is by no means improving, rather it is worsening. In 2011, 35 trade unionists were murdered or forcibly disappeared.⁵ Thirteen have been killed already this year.⁶ Intimidations and death threats are

⁵ ITUC, “Annual Survey of violations of trade unions rights”, 2012, available at <http://survey.ituc-csi.org/Colombia.html?edition=336&lang=en#tabs-5> (last accessed on 5 October 2012). The ITUC further reports 10 attempted killings, 342 threats and 16 imprisonments.

⁶ *El Nuevo Siglo*, “En 2012 13 sindicalistas han sido asesinados”, 17 August 2012, available under <http://www.elnuevosiglo.com.co/articulos/8-2012-en-2012-13-sindicalistas-han-sido-asesinados.html> (last

still the norm for trade unionists. Until today, Colombia is still one of the most dangerous countries in the world for trade unionists.

Ongoing impunity for such crimes creates an inverse incentive for potential perpetrators who feel encouraged to continue committing these crimes, instead of being deterred by examples of accountability. The impunity rate amounts to 92% of all cases of assassinations (with only 230 judgments having been rendered from 2,972 cases⁷). Prosecutions, moreover, very rarely target State actors, and hardly ever investigate the intellectual authors of those crimes. However, those most responsible must be investigated and prosecuted in order to interrupt this continuous State policy of committing such an attack. In February 2011, an ILO high-level tripartite mission to Colombia concluded that “the majority [of trade unionist killings] have not yet been investigated nor have the perpetrators, including the intellectual authors of these crimes, been brought to justice.”⁸

The admissibility criteria, of which the complementarity test is a part, must not only be fulfilled at the preliminary examination stage before an investigation is opened and the case is brought before the ICC, but have to be evaluated on an ongoing basis at every stage of the proceedings. A decision to take a step forward now and open an investigation does not preclude the option of closing the investigation at a later stage, should the complementarity test lead to a different result. There is a reasonable basis to believe that Colombia is not complying with its obligations under the complementarity principle. Therefore, complementarity considerations should no longer prevent the OTP from requesting the opening of a formal investigation.

Article 53(1) of the ICC Statute only requires that there be “a reasonable basis” in order to grant the opening of investigations into a situation. The anti-union violence that remains rife throughout Colombia more than satisfies this standard. As such, we urge the OTP to submit a request to the Pre-Trial Chamber in order to obtain authorisation to open an investigation into the situation of Colombia.

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The complete text of the communication is available upon request.

accessed on 5 October 2012), according statistics by the CUT. The CUT furthermore had registered 146 cases of threats.

⁷ *Fiscal General Viviane Morales et al.*, Informe: „Judicialización de los crímenes contra sindicalistas. Análisis de las sentencias proferidas de 2000 a 2011 por la justicia colombiana“, 2011, pg. 9, available under www.verdadabierta.com/archivos-para-descargar/category/58-sindicalistas?download=1023%3Ainforme-de-la-fiscalia-sobre-crmenes-contra-sindicalistas (last accessed on 5 October 2012).

⁸ *International Labor Organization*, “Conclusions of the High-level Tripartite Mission to Colombia”, 18 February 2011, pg. 7, available under http://waysandmeans.house.gov/uploadedfiles/ilo_high_level_mission.pdf; see also: *Human Rights Watch*, Letter to Attorney General Morales of 29 September 2011, p. 3, available under http://www.hrw.org/sites/default/files/related_material/Letter%20from%20HRW%20to%20Attorney%20General%20Morales_Sept%2029%202011.pdf (last accessed on 5 October 2012).